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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/697,465	10/30/2003	Rebecca Willey Griffin	18872	7960

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KIMBERLY-CLARK WORLDWIDE, INC.
401 NORTH LAKE STREET
NEENAH, WI 54956

EXAMINER

PIERCE, JEREMY R

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 06/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/697,465

Applicant(s)

GRIFFIN ET AL.

Examiner

Jeremy R. Pierce

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) 1-10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 11-22 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2/2/04</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-10, drawn to a method of making a nonwoven web, classified in class 264, subclass 546.
 - II. Claims 11-22, drawn to a nonwoven web, classified in class 442, subclass 353.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the nonwoven can be made by through-air heating to form the pattern bonds rather than by heat and pressure.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with Robert Ambrose on May 25, 2005 a provisional election was made with traverse to prosecute the invention of Group II, claims 11-22. Affirmation of this election must be made by applicant in replying to this

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Office action. Claims 1-10 withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 11-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 11 and 17 both recite the nonwoven web has a "substantially uniform basis weight." What does it mean for a web to have a uniform basis weight? Is Applicant equating this limitation to the "uniform large-scale visual appearance" described in Paragraph 49 of the Specification, which states the webs do not exhibit "any repeating pattern of alternating heavy and light areas or high density and low density strips." Does one equate basis weight with density? The specification does not define "uniform basis weight" and it's meaning is unclear. Clarification is requested.

Claim Rejections - 35 USC § 102/103

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 11-22 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Abuto et al. (U.S. Patent No. 5,804,021).

Abuto et al. disclose a fibrous nonwoven laminate that exhibits elastic properties in at least one direction (Abstract). The facing layer comprises a continuous fiber spunbonded web made from bicomponent fibers (column 7, lines 25-44). The web may be thermally point bonded in a pattern (column 9, lines 30-33). The web is provided with extensibility in the cross machine direction by forming slits that are parallel to the machine direction (See Figures 1 and 2). In its unstretched condition, the web appears to have a uniform basis weight, since there is no pattern of varying density or weight. Abuto et al. do not specify a fiber diameter in microns for the spunbonded web. However, spunbonded fibers are generally greater than 10 microns, unless otherwise specified as fine fiber spunbond (See US 2004/0121110 to Schmidt et al. at paragraph 15). Also, Abuto et al. disclose using 2 denier polypropylene/polyester bicomponent fibers (Example 1, column 13, lines 57-58). Denier can be converted to fiber diameter in microns using the teachings in paragraph 28 of US 2005/0079987 to Cartwright et al. The density for polyester is 1.38 g/cc and the density for polyethylene is 0.95 g/cc (See

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Adanur, Wellington Sears Handbook of Industrial Textiles, at p. 563). Assuming a 50/50 ratio of materials (density averages to 1.165 g/cc), a 2-denier bicomponent fiber would have a fiber diameter of about 15.6 microns. Even if one were to assume a greater presence of polyester (which would produce a smaller fiber diameter) of up to 100/0 (density equals 1.38), the fiber diameter would still be about 14.3 microns. So it is clear that the fibers of Abuto et al. anticipate the claim limitation of fiber diameter greater than 10 microns. It is also noted that Abuto et al. teach the fiber denier is not limited to 2, but may be up to 6 denier (column 13, lines 3-4).

With regard to claims 11-13 and 17-19, although Abuto et al. do not explicitly teach the limitations of force required to stretch the web in the cross machine direction as compared to the force required to stretch the web in the machine direction, it is reasonable to presume that said limitations are inherent to the invention. Support for said presumption is found in the use of similar materials (i.e. spunbonded web with crimped fibers that is thermally point bonded in a pattern) and in the similar production steps (i.e. configuring the web so that it is capable of stretching in the cross machine direction) used to produce the nonwoven fabric. The burden is upon the Applicant to prove otherwise. *In re Fitzgerald*, 205 USPQ 594. In the alternative, the claimed limitations would obviously have been provided by the process disclosed by Abuto et al. because the reference teaches how to vary the stretching capability of the fabric (See column 11, line 64 – column 12, line 56). Note *In re Best*, 195 USPQ 433, footnote 4 (CCPA 1977) as to the providing of this rejection under 35 USC 103 in addition to the rejection made above under 35 USC 102.

With regard to claims 14 and 20, the fibers of the web are provided with latent crimps (column 8, lines 20-42). With regard to claims 15, 16, 21, and 22, the spunbonded web is bonded to an elastic film or nonwoven web (column 4, lines 27-30).

Conclusion

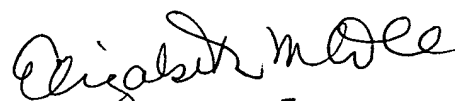
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeremy R. Pierce whose telephone number is (571) 272-1479. The examiner can normally be reached on Monday-Friday between 9am and 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jeremy R. Pierce
June 2, 2005



ELIZABETH M. COLE
PRIMARY EXAMINER